



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2014-0367

RIN 1625-AA09

Drawbridge Operation Regulation; Darby Creek, Essington, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is changing the operating regulation that governs the Conrail railroad bridge over Darby Creek at mile marker 0.25 in Essington, PA. The bridge owner, Conrail, is modifying the existing remote operating system which controls the bridge operations. Cameras will be installed and the remote operating site will move from its current location in Delair, NJ to Mt. Laurel, NJ. The train crew is no longer required to stop and check the waterway for approaching vessel traffic prior to initiating a bridge closure and mariners requesting an opening for the bridge will have to contact the new remote location.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2014-0367. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mrs. Jessica Shea, Fifth Coast Guard District Bridge Administration Division, Coast Guard; telephone 757-398-6422, e-mail [jessica.c.shea2@uscg.mil](mailto:jessica.c.shea2@uscg.mil). If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
Conrail	Consolidated Rail Corporation
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

§                                      Section Symbol  
U.S.C.                                United States Code

A. Regulatory History and Information

On August 1, 2014, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Darby Creek, Essington, PA in the Federal Register (79 FR 44724). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The bridge owner, Conrail, requested a change to 33 CFR 117.903 because they modified the sensor and visual equipment on site at their bridge across Darby Creek. They also relocated the remote operation station to a new location. The regulation is changing two aspects of the bridge operation. Specifically, the location of the remote operator and the installation of cameras to verify whether any vessels are transiting the waterway before a bridge closure is initiated. This rule does not change the operating schedule of the bridge.

The scope of the waterway inspection is different between the current on-site train crewmember inspection process and the range of the proposed camera installation. There is also a difference in the time it takes between the inspection and the initiation of the bridge closure operations. Currently,

the regulation requires an on-site train crewmember to conduct an inspection of the waterway for vessels by stopping the train approximately 200 feet north of the bridge site when approached from the north and 300 feet south of the bridge site when approached from the south. Once the train is stopped, the train crewmember walks to the bridge site and physically looks up and down the channel. The time it takes to stop the train, walk to the bridge, conduct the inspection, walk back to the train, and re-start the train takes 15-20 minutes. As changed, the regulation allows the remote operating station to inspect the waterway with cameras without first stopping the train which permits a more efficient operating system.

The closer the vessels are to the bridge, the more likely it is that the train crewmember will see them using the process required by the current regulation. Under the modified regulation, the camera inspection of the waterway has the capability to zoom up and down stream allowing for easier detection of a smaller vessel approaching the bridge. After inspection of the waterway, using the cameras, the bridge closing operations would then occur from a remote location at the Mt. Laurel remote operating station.

Currently, the bridge is in the open to navigation position between April 1 and October 31 and operated by the

bridge controller at the remote operating station in Delair, NJ. The shift from the Delair, NJ to the Mt. Laurel, NJ operating station enables Conrail to consolidate its control of the train line and Darby Creek Bridge. By controlling the track as well as the bridge operating mechanism at the Mt. Laurel station, the remote operator has access to more information regarding the anticipated arrival time for when the trains will be at the bridge site. Information such as train speed and location directly contribute to when the bridge will need to be closed. The shift of the remote operating location to the Mt. Laurel location may shorten the duration of the bridge closures due to the higher accuracy of information on train speed and anticipated arrival time at the bridge site.

The average tidal range for Darby Creek is 5 feet. Currents run on average between 1-2 knots. The actual depth at the bridge ranges between 15 and 20 feet. Darby Creek is used by several recreational vessels during the summer boating season. There is no commercial vessel traffic on Darby Creek.

From April 1 to October 31, the bridge is left in the open to navigation position and will only be lowered for the passage of train and maintenance. Train activity in this location requires the bridge to close to navigation four times a day Monday thru Friday. On Saturday and Sunday, the bridge

is used twice each day.

From November 1 through March 31, the bridge is in the closed to navigation position but will open if 24 hours notice is given.

#### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 45 days and no comments were received therefore no changes were made. However, the Coast Guard is making non-substantive changes in the Final Rule that were not identified in the NPRM.

The mile marker listed in 33 CFR § 117.903 (a) describes the bridge as being located at mile marker 0.3. Upon further review, the description of the geographic location for this bridge is being revised to reflect its actual location at mile marker 0.25. The regulatory text has been updated to clarify 1) how the lights on the drawbridge actually operate when the span is in motion and 2) change the terminology channel traffic lights to center span lights. Also, the paragraphs under 33 CFR 117.903(a) have been reorganized for efficiency. None of these changes affect the intent of the NPRM or the operation of the bridge.

The drawbridge operating schedule will not change under the Final Rule. From April 1 to October 31, the bridge will continue to be left in the open to navigation position and will only be lowered for the passage of train and maintenance.

From November 1 through March 31, the bridge is in the closed to navigation position but will open if 24 hours notice is given.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. There are no changes to the drawbridge operating schedule only to the methods used to operate the drawbridge.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. There are no changes to the drawbridge operating schedule. Vessels that can safely transit under the bridge may do so at any time.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and



Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. The Coast Guard did not receive any comments relating to federalism. Accordingly, there were no changes to the proposed regulatory text.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore,

we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.903(a) to read as follows:

§ 117.903 Darby Creek.

(a) The draw of the Conrail automated railroad bridge, mile 0.25, at Essington, shall operate as follows:

(1) The bridge will be operated remotely by the South Jersey Train Dispatcher located in Mt. Laurel, NJ. Operational information will be provided 24 hours a day by telephone at (856) 231-2282.

(2) From April 1 through October 31, the draw shall be left in the open position and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(3) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given by telephone at (856) 231-2282. Operational information will be provided 24 hours a day by telephone at (856) 231-2282.

(4) The timeframe to initiate the bridge closure will be not more than 10 minutes before a train will arrive at the bridge location. If a train, moving toward the bridge has crossed the home signal for the bridge, the train may continue across the bridge and must clear the bridge prior to stopping for any reason. Trains shall be controlled so that any delay in

opening of the draw shall not exceed fifteen minutes except as provided in § 117.31(b).

(5) The bridge will be equipped with cameras and channel sensors to visually and electronically ensure the waterway is clear before the bridge closes. The video and sensors are located and monitored at the remote operating location in Mt. Laurel, NJ. The channel sensors signal will be a direct input to the bridge control system. In the event of failure or obstruction of the infrared channel sensors, the bridge will automatically stop closing and the South Jersey Train Dispatcher will return the bridge to the open position. In the event of video failure the bridge will remain in the full open position.

(6) The Conrail Railroad center span light will change from fixed green to flashing red anytime the bridge is not in the full open position.

(7) Prior to downward movement of the span, the horn will sound two prolonged blasts, followed by a pause, and then two short blasts until the bridge is seated and locked down. At the time of movement, the center span light will change from fixed green to flashing red and remain flashing until the bridge has returned to its full open position.

(8) When the train controller at Mt. Laurel has verified that rail traffic has cleared, they will sound the horn five times

to signal the draw is about to return to its full open position.

(9) During upward movement of the span, the horn will sound two prolonged blasts, followed by a pause, and then sound two short blasts until the bridge is in the full open position. The center span light will continue to flash red until the bridge is in the fully open position.

(10) When the draw cannot be operated from the remote site, a bridge tender must be called to operate the bridge in the traditional manner. Personnel shall be dispatched to arrive at the bridge as soon as possible, but not more than one hour after malfunction or disability of the remote system.

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Dated: October 30, 2014.

Stephen P. Metruck,  
Rear Admiral, United States Coast Guard,  
Commander, Fifth Coast Guard District.

[FR Doc. 2014-27296 Filed 11/18/2014 at 8:45 am;

Publication Date: 11/19/2014]